

REMARKS

The undersigned would like to begin by thanking the Examiner for his time and suggestions during the telephonic interview on January 30, 2004. The amendments and remarks presented herein include matters discussed during the interview. As stated in the Examiner's Interview received by facsimile on February 3, 2004, claims 1, 14 and 24 were deemed fully enabled by the Specification and the Section 112, first paragraph, rejection of claims 1, 14 and 24 was withdrawn. In addition, the amendment to claim 1 proposed by the applicant and reflected in the present Amendment and Remarks was discussed. Finally, the Examiner stated that an inadvertent error was made in excluding claim 69 in the Section 103(a) rejection based on Gabetta et al.

In the final Office Action, all pending claims 1-9, 11, 14-28, 61-62, 65-66, and 69-72 were rejected. The Advisory Action stated that the proposed Amendments filed February 4, 2004, would not be entered because the Examiner asserts that they raise new issues that would require further consideration and/or search. The Examiner further states that in order for the application to be allowable, claims 61-62, 65-66, and 69-72 should be canceled and claim 1 should be amended to replace step (a) with the following: "extracting plant or plant parts known to contain anthocyanins with an acidified extraction solvent without adding bisulfite ions to form a crude extract comprising anthocyanins".

In response thereto, claim 1 has been amended in accordance with the Examiner's suggestion, and claims 61-62, 65-66, and 69-72 have been cancelled. As a result of this amendment, claims 1-9, 11, and 14-28 remain pending for the Examiner's consideration. None of the amendments set forth herein constitute the addition of new matter. Reconsideration of the application as amended is respectfully requested. Withdrawal of the objections to the specification, objections to claims 20 and 44, the rejection of claims 26, 29, 48, 54, and 58 under Section 112, second paragraph, and the Section 102(b) rejections as stated on page 2 of the final Office Action is acknowledged.

A. Rejections under 35 U.S.C. § 112, first paragraph, addressed

The rejection of claims 1, 14 and 24 under 35 U.S.C. § 112, first paragraph, was maintained in the final Office Action. However, during the telephonic interview of January 30, 2004, the Examiner stated that upon further consideration, claims 1, 14 and 24 were indeed fully enabled and hence this rejection was withdrawn.

B. Rejections under 35 U.S.C. § 103(a) addressed

1. The rejection of claims 1-9, 11, and 14-28 under 35 U.S.C. §103(a) as being unpatentable over Gabetta in view of GB Patent No. 1,235,379 to S.O.R.I. was maintained for reasons of record in paper No. 5. This rejection is respectfully traversed. It is asserted that the cited references do not expressly or inherently teach or suggest all the elements as set forth in claims 1-9, 11, and 14-28 for the reasons presented below. Hence, a *prima facie* case of obviousness under 103(a) cannot be maintained.

The Examiner relies on Gabatta in part for teaching the use of bisulfite ions in isolating anthocyanins. In the Interview Summary received by facsimile on February 3, 2004, the Examiner agreed with the suggestion that adding the limitation of excluding the use of bisulfite ions to claim 1 would distinguish the present invention from the prior art. Accordingly, claim 1 has been amended herein to further clarify the differences between the method of the present invention and Gabetta by reciting that the method includes extracting a plant material known to contain anthocyanins with an extraction solvent without adding bisulfite ions to form a crude extract comprising anthocyanins. Support for this amendment can be found in the Specification at paragraph [0041]. Therefore, the Examiner's rejection based on the fact that "Gabetta teaches adding a source of bisulfite ions" is moot in light of this amendment, since Gabetta requires the addition of bisulfite ions, whereas the presently amended claims specifically states that the extract is formed without the addition bisulfite ions. On this basis alone the rejection should be withdrawn.

In addition, the Examiner relied on the S.O.R.I reference primarily for teaching the use of an anion exchange resin to enhance the purification of the isolated anthocyanin, and further the Examiner asserts that anion exchange resins belong to the same class of resins as the brominated polystyrene resin (see page 5, paragraph 4 of the final Office Action). However, the Examiner's use of the S.O.R.I. reference is based on an erroneous assumption. Polystyrene resins, including brominated polystyrene resins, are not anion exchange resins, but rather are nonpolar resins. Thus, since the S.O.R.I reference does not teach or even suggest the use of a nonpolar resin, let alone a brominated polystyrene resin, this reference is irrelevant to the patentability of the present invention. As stated in the Amendment filed August 8, 2003, it was surprisingly and unexpectedly discovered that the brominated polystyrene resin binds anthocyanins less tightly than non-brominated polystyrene resins, but still allowed for the separation of anthocyanins from undesired extraneous impurities that are more polar than the anthocyanins (see paragraph [0036]).

In light of the foregoing remarks, it is asserted that claims 1-9, 11, and 14-28 as presently pending are patentable over the cited references. Withdrawal of this rejection is

respectfully requested.

2. Claims 61-62 and 70 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Levy et al. in view of S.O.R.I. While Applicants do not acquiesce to this rejection, claims 61-62 and 70 have been cancelled herein in order to expedite prosecution. Withdrawal of this rejection is respectfully requested.

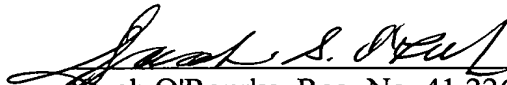
3. Claims 65-66, 69, and 71-72 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gabetta et al. in view of Langston (U.S. Patent No. 4,500,556) and S.O.R.I. It is noted that the Examiner clarified the status of claim 69 in the Interview Summary, stating that claim 69 was inadvertently omitted in the rejection based on Gabetta et al. While Applicants do not acquiesce to this rejection, claims 65-66, 69, and 71-72 have been cancelled herein in order to expedite prosecution. Withdrawal of this rejection is respectfully requested.

CONCLUSIONS

All outstanding rejections having been addressed, claims 1-9, 11, and 14-28 are believed to be in condition for allowance, and such action is respectfully requested. The fee associated with the Petition for a two month time extension accompanies this response. Should any additional fees be due, the Examiner is authorized to charge Deposit Account No. 50-1123. If any questions or issues remain to be resolved, the Examiner is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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Dated


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